

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RICHARD S. MARSEE)	
and CHRISTA M. MARSEE,)	
)	
Plaintiffs,)	TC-MD 050041D
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss, filed February 8, 2005, stating in its Answer that Plaintiffs did not “timely file with the Board of Property Tax Appeals.”

A case management conference was held on Monday, March 14, 2005. Plaintiffs appeared on their own behalf. Joe Honl, Appraisal Manager, appeared on behalf of Defendant.

During the conference, the court and Defendant discussed Oregon’s property tax system with Plaintiffs. Real market value, maximum assessed value, and assessed value were explained and discussed. Plaintiffs were informed that, because there have been no new additions or improvements to their property, they could not appeal their maximum assessed value.

See Ellis v. Lorati, 14 OTR 525, 534 (1999) (holding that a taxpayer “may not challenge the real market value shown on the tax roll for July 1, 1995.”).

The court explained that the Oregon Legislature has developed an appeals procedure for taxpayers to follow when challenging the values assigned to their property. In most cases, taxpayers are required to appeal to the county board of property tax appeals (BOPTA) no later than December 31 of the current tax year. ORS 309.100(2)¹. For tax year 2004-05, Plaintiffs did not appeal to BOPTA.

¹ References to the Oregon Revised Statutes (ORS) are to year 2003 unless otherwise noted.

The legislature recognized there would be certain situations in which a taxpayer would not make a timely appeal to BOPTA. As a result, the legislature granted the court authority to review untimely appeals and reduce the value if there is either: (1) an error in value of at least 20 percent, or (2) a good reason for the taxpayer's failure to appeal to BOPTA. ORS 305.288.

Plaintiffs purchased their property in September 2003 for \$850,000. The real market value on the tax roll is \$977,888. The difference between the values is not 20 percent.

The term "good and sufficient cause" is defined in the statute as "an extraordinary circumstance that is beyond the control of the taxpayer * * * that causes the taxpayer * * * to fail to pursue the statutory right of appeal." ORS 305.288(5)(b)(A). It "[d]oes not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information." ORS 305.288(5)(b)(B).

In discussing why Plaintiffs failed to file an appeal with BOPTA, Plaintiff, Christa Marsee (Marsee), testified that when she received the property tax statement for 2004-05, she paid the taxes. Later, approximately a week before the Christmas holiday, Marsee was informed by her real estate agent that she could appeal the value. She was unable to find the time to file her petition with BOPTA before the filing deadlines. Unfortunately, Marsee's reason for failing to appeal does not meet the statutory "good and sufficient cause" exception found in ORS 305.288(3).

The court finds that the difference in value does not meet the 20 percent requirement of ORS 305.288. Further, the court finds that Plaintiffs lack good and sufficient cause for failing to timely pursue their remedy with BOPTA. Therefore, the court finds it lacks authority to order relief under the provisions of ORS 305.288. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal was not timely filed with BOPTA and their appeal must be dismissed because the court lacks authority to order the relief requested.

Dated this _____ day of March 2005.

JILL A. TANNER
PRESIDING MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

THIS DOCUMENT WAS SIGNED BY PRESIDING MAGISTRATE JILL A. TANNER ON MARCH 24, 2005 . THE COURT FILED THIS DOCUMENT ON MARCH 24, 2005.